



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/606,100

06/25/2003

James M. Odom

2233.001

4189

25784 7590 01/09/2007
MICHAEL O. SCHEINBERG
P.O. BOX 164140
AUSTIN, TX 78716-4140

EXAMINER

SPRIGG, SEAN M

ART UNIT

PAPER NUMBER

3714

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

01/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/606,100	Applicant(s) ODOM ET AL.	
	Examiner Sean Sprigg	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8,13,15,16,19 and 28-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8,13,15,16,19 and 28-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/19/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 15-16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 15-16 include the element of wagering data and it is unclear as to whether the wagering data in these claims is referring to the same wagering data of claims 1 and 13 or if it is a second kind of wagering data. For the purposes of this examination, the wagering data will be assumed to be the same between claims 1, 13, and 15-16 as there is no explicit distinction made between the wagering data of claims 1 and 13 and the wagering data of claims 15-16.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 4-5, 8, 13, 15-16, 19, and 28-29, 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hannan'627 (US Pub. No. 2004/0029627).

Claims 1, 4-5, 8, 13, 19, 28-29, 31-37: Hannan'627 discloses a method of lottery wagering on a phased competition (see par. 11) having the steps of determining a number of participants from a pre-qualifying event of a phased competition based on rankings (see pars. 11-12, 52), assembling concluding data such as rankings for final participants of a final event (see par. 51), determining at least

one winner of the final event based on the concluding data (see par. 51), collecting and correlating the concluding data of a winner of the event with the pre-qualifying data of the winner (see pars. 51-52), and determining the winning lottery data based on the collecting/correlating step (see pars. 51-52). With regard to the pre-qualifying data, the preliminary participants, and the pre-qualifying event, Hannan'627 discloses that the winning criteria are established by the outcome of "an actual scheduled sporting event or series of events" like a golf tournament or auto race (see pars. 11 and 14). The pre-qualifying data as described in Hannan'627 are the rankings of participants entering the current event, wherein the participants of the event could be a subset of a larger group that contains participants that did not qualify for the current event due to a low ranking. For instance, in entering a tournament such as a tennis, golf, basketball, or football tournament, certain teams or individuals will have rankings from regular season play or a qualifying event, which aids in the seeding of the teams or individuals and helps determine which individuals will be allowed to enter the tournament. Therefore, Hannan'627 discloses a phased competition with a pre-qualifying event, preliminary participants, pre-qualifying data, concluding data, final participants, and a final event. Hannan'627 also discloses the collecting and correlating of data with regards to participants (see pars. 11-12 and 51-52). Hannan'627 also discloses a player of the lottery wagering method providing wagering data selecting, either randomly or manually, the participants they believe will finish in a certain subset of winning participants of the final event

(see pars. 47, 50, 57, and 75). The player makes the wagering selections with a lottery distributor over a communication link of a computer network, the Internet, landline telephony, or other forms of communication (see pars. 39-42, 75 and 76). Hannan'627 discloses that the wagering data submitted by the player is compared to the winning lottery data and that the player is awarded a prize for making all or some of the correct selections in the lottery (see pars. 11-13 and 51-52). Hannan'627 discloses that the player can change the wagering selections before the conclusion of the final event (see par. 48). Hannan'627 also discloses the method being applied to the sport of auto racing, wherein the "pole" position or ranking would be used as a pre-qualifying event's wagering numbers, and the determination of the lottery numbers would be the "pole" position of the winning participants (see par. 14). Hannan'627 finally discloses a system with a distributor with a storage medium, a means for correlating data, a communication link to the player of the lottery game (including through a computer network or the Internet), a hub (or server) for sharing information between distributors, and a communication link to the hub for receiving game information (see pars. 39-42, 75 and 76). The system as described in Hannan'627 includes a processor unit and memory that stores the method as a computer program (see pars. 39-42, 75 and 76). Hannan'627 does not explicitly disclose the steps of assigning a random number to the final participants, correlating the concluding data of a winner to the random number assigned to the

winner, and the random numbers being assigned to the final participants after accepting the wager.

However, Hannan'627 does appear to suggest that it is desirable in at least one embodiment that a player's wager of picked numbers be randomized. This is evidenced in paragraph 75 by stating that a wagerer's selections can be made by a random number generator as part of a "quick pick" option. In other words, Hannan'627 suggests that in one embodiment, there is no element of skill involved and that mere chance determines if a wagerer wins the lottery or not. It appears that this feature is desirable to allow gamblers who know nothing about sports to be involved by making random selections much like a standard lottery. Additionally, Hannan'627 teaches that typical lotteries are determined randomly providing no knowledge to the user that would allow them to use skill in determining the results of the lottery before it takes place. Hannan'627 teaches that this is achieved through randomizing the results, randomizing the wagers (through "quick pick" options). By randomizing game information, skill is eliminated. While Hannan'627 proposes a alternative to these wagering techniques by allowing a user to make number selections based on skill, Hannan'627 has also suggested that randomization may be desirable to attract certain players. Therefore, it should be noted that Hannan'627 does not teach away from providing randomization in the method instead of skill as means for allowing a randomized lottery are disclosed. It should also be noted that a main objective in Hannan'627 is to provide a lottery game wherein the winning

Art Unit: 3714

numbers are determined by outcomes of sporting events instead of a random number generator.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hannan'627 with a randomization of the numbers associated with the final participants of a final event without knowledge of the wagerer (after a wagerer has made a selection) and using these random numbers to determine a winning wager, as it is suggested in the description of typical lotteries for the purpose of providing a lottery game that does not require skill but is related to how participants perform in a sporting event, thereby increasing the number of players who may be interested in the game. By providing randomization of numbers associated with the final participants instead of known ranks, randomness is achieved, skill is eliminated, and Hannan'627 still achieves the objective of having the winning numbers being determined by the results of a sporting event.

Claims 15-16, 38: Hannan'627 discloses all the features of the present invention, but does not explicitly disclose entering a player's wager into a second lottery phase based upon the outcome of the comparing step. Hannan'627 does teach that the lottery method could be applied to a tournament such as a golf tournament, tennis tournament, or a bass fishing tournament (see par. 11). It is well known that tournaments are competitions in which winners continue to the next round of play (phase) while losers are excluded. As a tournament is a single competition but there are phases of that competition, it is understood that

the phases of a lottery correspond with the phases of the tournament. Therefore, Hannan'627 suggests that the player's wager could be entered repeatedly within a single tournament competition, wherein a lottery result is obtained during each phase of the competition. Whether the entry is allowed to be entered into the next phase of the lottery, which corresponds with the next phase of the tournament competition, is dependent on the comparison step of the first phase of the lottery. This is apparent from the fact that as a tournament progresses, the subset of participants decreases and valid lottery numbers for the first phase may not be included in the second phase. Therefore, only wagers that have valid numbers for the second phase after the comparison step are allowed to continue. It can be said then, that repeating a wager in a second lottery phase is taught and suggested by Hannan'627 through the use of a tournament as a competition on which the lottery is based. Providing wagering on tournaments in this fashion would allow for more wagers to be placed for a single competition, increasing gameplay and revenue opportunities.

Alternatively, a player could simply place the same wager in a second phase of a tournament based on the outcome of the first phase of the tournament, wherein the outcome determines whether a player has sufficient means to place a wager on the second phase of the lottery and/or tournament. Providing such a second entry requires no consideration by the wagerer as the wager does not need to be changed between the first lottery phase and the second lottery phase so long as all participants of the first lottery phase wagered

on are in the second lottery phase. This may be done to quicken the pace of the game

In other words, a player's wager can be repeated within a number of different competitions, such as lotteries as described above and in the previous action, or through repetition of a wager. Furthermore, even if Hannan'627 may not explicitly disclose such a wager on second phase of a lottery, it would have been obvious at the time the invention was made to perform these functions as suggested by Hannan'627 of providing lottery play based on phases of tournaments to allow more opportunities for players to place wagers and increase the distributors income. Since Hannan'627 discloses second phase wagers or are obvious, wagering data could be determined by the same means as used to randomly provide a wager for the first phase as described above. It is noted that since the wagering data may be the same in the second phase of the lottery as the first phase, as described above regarding the clarity of claims 15-16, and the concluding data may be the same in the second phase as the first phase by virtue of the participants causing a similar conclusion in the different phases of the competition, the lottery results of the second lottery are determined by the concluding data.

5. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hannan'627 in view of Perlin'810 (US Pub No 2004/0043810).

Claim 30: Hannan'627 discloses all the features of the claimed invention except for the competition being an entertainment competition.

Perlin'810 teaches a system and contest wherein various activities and competitions are managed by the system (Abstract and par. 21). Among the list of activities and competitions are sporting events and entertainment award competitions (par. 21). Though Perlin'810 does not appear to explicitly use competitions as part of a method or system for determining the winner of a lottery, Perlin'810 teaches that entertainment award competitions are competitions and that they may be used in a similar fashion to sporting events within a system because of the both feature individuals or teams with certain individuals or teams winning in an event. Perlin'810 appears to teach the use of entertainment award competitions in addition to sporting event competitions for the purpose of appealing to a wider range of people who may enjoy entertainment events rather than sporting events.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hannan'627 with a competition that is an entertainment award competition as taught by Perlin'810 for the purposes of allowing the lottery game system and method to appeal to a wider range of potential players.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 4-5, 8, 13, 15-16, 19, and 28-38 have been fully considered but they are not persuasive. Applicant's arguments have been responded to in the above arguments and explanations. Additionally, rejections provided in the previous action has been clarified and further explained for Applicant's

Art Unit: 3714

convenience. In addition to the explanation provided above, it is understood that providing a second phase lottery on the same competition as described in the above rejection and described in the specification have differences. However, under the broadest reasonable interpretation of what is claimed in claims 15-16, Hannan'627 provides all the claimed features either implicitly or through an obvious modification.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Sprigg whose telephone number is (571) 272-5562. The examiner can normally be reached on Monday - Friday, 9:00-5:30.

Art Unit: 3714

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMS
12/27/06


SCOTT JONES
PRIMARY EXAMINER